

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

JUL 11 2005

FILED

IN THE MATTER OF THE DENIAL OF
APPLICATION FOR LICENSE FOR
BRIAN M. SCHMIDT

)
) FINDINGS OF FACT, CONCLUSIONS
) OF LAW, RECOMMENDED ORDER
) AND ORDER
)
)
) CAUSE NO. A-1625
)

This matter came on for hearing on the 6th day of July, 2005, before Christine M. Neighbors, a hearing officer duly appointed by the Director of the Nebraska Department of Insurance. The matter arises out of a denial of an application for a resident insurance producer's license. The Nebraska Department of Insurance ("Department") was represented by its attorney, Eric Dunning. Brian M. Schmidt ("Applicant") was present and was not represented by counsel. The proceedings were tape recorded by Tracy Gruhn, a licensed Notary Public. Applicant and Department presented evidence and testimony at the hearing and the matter was taken under advisement. The hearing officer hereby makes the following Findings of Fact, Conclusions of Law, and Recommended Order.

FINDINGS OF FACT

1. The Department is the agency of the State of Nebraska charged with licensing insurance producers.

2. On or about May 9, 2005, Applicant applied for a resident insurance producer's license. (Ex. 2). Applicant's current address is listed on the application as 1349 South 101st Street, Apt. 309, Omaha, NE 68124, however, it appears that since the application, Applicant has moved to 14706 Pratt Ct., Apt. 201, Omaha, NE 68116. (Ex. 2).

3. In response to Part III, Question C, of the insurance producer license application, Applicant indicated that he had previously been convicted of or pled nolo contendere (no contest) to any misdemeanor or felony or currently had pending misdemeanor or felony charges filed against him. (Ex. 2). Attached to the application was a copy of records related Applicant's conviction on two counts of Burglary in the District Court of Douglas County, Nebraska.

4. On or about May 16, 2005, Beverly Creager, Licensing Administrator for the Department, notified Applicant that his application for an insurance producer's license was denied based on his conviction of a felony or Class I, II, or III misdemeanor, under Neb. Rev. Stat. § 44-4059(1)(f), and notified him of his right to request a public hearing within thirty days of his receipt of the denial letter if he wished to appeal the denial. (Ex. 2).

5. On or about June 6, 2005, Applicant requested a hearing to appeal the Department's denial for an insurance producer's license. (Ex. 3).

6. Applicant testified that he is currently employed as a business and finance manager with Lake Manawa Nissan and Kia ("Lake Manawa") in Council Bluffs, IA. If licensed, Applicant would sell credit insurance to customers of Lake Manawa in connection with the purchase of motor vehicles. This license is necessary for Applicant to advance within the Lake Manawa organization.

7. Applicant initially was arrested in 1993 at age 17 for burglary at a clothing store in Iowa. He was sentenced to probation and 100 hours of community service. During the time of probation, Applicant was arrested on two counts of burglary in Omaha, Nebraska. Sentencing on the burglary charges was continued so that Applicant could finish his high school education and 100 hours of community service. Applicant chose to volunteer at a senior center facility to satisfy his community service requirement. He continued volunteering at the facility after completing the 100-hour requirement.

8. On or about July 21, 1994, Applicant pled guilty in the District Court of Douglas County, Nebraska, to two counts of Burglary and was sentenced to 180 days in a correctional center for Count I and 180 days in a correctional center for Count II plus payment for prosecution costs. (Ex. 2). From the record, it appears that Applicant served a total of 180 days. (Ex. 1). This was following the completion of his high school education.

9. Applicant may have completed probation for the criminal offenses in 1997 or 1998. Applicant was unclear about the year, but testified that he has been gainfully employed since his release from jail working at various positions of responsibility within Nebraska/Iowa as a grocery cashier, grocery front-end manager/cash office manager, and self-employed business owner. Applicant completed one year of college at Iowa Western Community College and the training program at EQ School of Hair Design. Applicant holds a cosmetology license and was previously self-employed until suffering an injury to his knee. Following his injury, Applicant worked at another auto dealer before his employment with Lake Manawa.

10. Applicant has been employed with Lake Manawa since March 2003 initially working in new car sales. Since March 2003, Applicant has been promoted to special finance manager, assistant sales manager, and now his current position of business and finance manager.

11. Applicant provided letters in support of licensure from the following individuals with Lake Manawa: Dennis Gascoigne, Principle Owner; Chuck Norman, General Manager; Ian Duffey, Finance Director; Ryan Winroth, Business and Finance Manager. (Ex. 1). In addition, Applicant submitted a letter of support from Kimber Serice, Licensing Analyst with Enterprise Life Insurance Company ("EFG"). Applicant successfully completed EFG's state approved training course on the sale of credit insurance, ethics, and agent's responsibility regarding the sale of credit insurance. (Ex. 1).

12. Applicant submitted his own letter of explanation in addition to his testimony at hearing, and letters of support from his wife and parents-in-law. (Ex. 1).

13. The granting of a license by the Department is based upon the veracity of the facts disclosed in the application, the testimony given and the evidence introduced into the record at the hearing.

CONCLUSIONS OF LAW

1. The Department has jurisdiction and control over the licensing of insurance producers to sell insurance in the State of Nebraska pursuant to Neb. Rev. Stat. §44-101.01 and §44-4047 et seq.

2. The Department has personal jurisdiction over Applicant.


3. The conviction constitutes a sufficient basis for denying a license to Applicant pursuant to Neb. Rev. Stat. §44-4059(1)(f).

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended to the Director of Insurance that the Director approve applicant's request for licensing as an insurance producer with such license limited to credit insurance.

Dated this 8th day of July, 2005.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE


Christine M. Neighbors
Hearing Officer

CERTIFICATE OF ADOPTION

I have reviewed the foregoing Findings of Fact, Conclusions of Law, and Recommended Order and hereby certify that the Recommended Order, providing for the approval of Applicant's request for an insurance producer's license limited to credit insurance, is adopted as the official and final Order of this Department in The Matter of the Denial of Application For License For Brian M. Schmidt, A-1625.

Dated this 11th day of July, 2005.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



L. TIM WAGNER
Director of Insurance

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Findings of Fact, Conclusions of Law, Recommended Order, and Order was served upon the Applicant, by mailing a copy to Applicant at 14706 Pratt Ct., Apt. 201, Omaha, NE 68116, by certified mail, return receipt requested, on this 13th day of July, 2005.

